

**BOARD OF ZONING APPEALS
MINUTES
March 23, 2010**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on March 23, 2010, in the MAPC Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, JAMES THOMPSON, STEPHEN HERMANN and JOSHUA BLICK (arrived at 1:36 PM).

Board members absent:

STEVE ANTHIMIDES

CHARLIE YOUNG

City of Wichita staff present:

JEFF VANZANDT– Law Department

JR COX – Office of Central Inspection

The following Planning Department staff members were present:

DONNA GOLTRY, Current Plans Principal Planner, Assistant Secretary

YOLANDA ANDERSON, Recording Secretary

The following Planning Department staff member was absent:

JESS MCNEELY, Secretary

GREENLEE I will call meeting of March 23, 2010 to order at 1:36 PM. Let's approve the minutes for January 26, 2010; all in favor say aye?

BLICK I move we approve the minutes for previous meeting of January 26, 2010.

THOMPSON Seconded

Motion carries unanimously (5-0)

GREENLEE Off-agenda item, we need to elect a secretary and an assistant secretary.

FOSTER I move to appoint Dale as the Secretary and Donna Goltry as the Assistant Secretary.

BLICK Seconded

Motion carries unanimously (5-0)

GREENLEE We will hear BZA2010-04 a City sign code variance request to reduce the distance of a billboard from a park from 660 to approximately 500 feet, and to increase the permitted height from 43 feet to 50 feet in "GI" General Industrial zoning.

GOLTRY Donna Goltry, Planning staff, presented BZA2010-04.

BACKGROUND: The Sign Code prohibits off-site billboard signs within 660 feet of any park or recreation area under the jurisdiction of any public body (Sec. 24.222.4.f). The proposed location for this sign is approximately 500 feet from the boundary of the soccer fields owned by the City of Wichita and operated by the Parks and Recreation Department. The permitted height for off-site billboard signs is 30 feet with the exception that signs located adjacent to an elevated portion of a highway structure may be erected to a maximum height of 14 feet above the top of the railing or barrier along the traffic deck; furthermore, this height can be increased by administrative review under Sec. 24.04.251.h Sign Code Adjustments to 20 feet. An administrative adjustment to allow this increase was approved by BZA2009-00004 for the original sign location. The sign would have been permitted a height of 39 feet 11 inches. The requested height by this variance is to raise the height to 50 feet, along with the shift of 51 feet closer to the park facility.

At the time the case was filed, the applicant stated that they needed to move the sign closer to the soccer field due to topographic conditions that were a hardship on the sign height. It should be noted however, according to the topographic information provided by the applicant, the proposed and original sign locations only vary by 0.4 feet. The allowable height at the proposed location with administrative review is 41.67 feet. If the sign were shifted to the location that adheres to the distance separation, the allowable height with administrative review is 39.9 feet.

The applicant feels that the requested location shift and height increase are necessary for extending the length of time the sign is visible for motorists on I-135 from the merging of I-235 approximately ½ mile north of the proposed sign location and because a cluster of trees north of 37th Street North reduces the viewing window of visibility of the sign. The sign is proposed as a two-sided sign, also to be viewed by northbound traffic.

The proposed sign location is located on the site of the food warehouse operated by Central Christian Church, His Helping Hands, zoned GI. Property to the north, west and to the east of I-135 is zoned GI and used for warehouse and other manufacturing and business service uses.

ADJACENT ZONING AND LAND USE:

NORTH	GI	Warehouse-office combination, industrial
SOUTH	GI	Vacant, I-135
EAST	GI	I-135, warehouse-office combination, industrial
WEST	GI	Warehouse-office combination, industrial

The five criteria necessary for approval as they apply to variances requested.

VARIANCE 1: REDUCE DISTANCE OF BILLBOARD FROM 660 TO NO LESS THAN 500 FEET FROM A PARK

UNIQUENESS: It is staff's opinion that this property is unique. The presence of a park facility operated by the City of Wichita Parks and Recreation Department in GI-zoned property is unusual and introduces a restriction on the site that would not be typical of GI zoning.

ADJACENT PROPERTY: It is staff's opinion that the reduced distance between the billboard and the parkland by 51 feet should not exert a significant effect on the park and the presence of two rows of trees will reduce the visibility of the billboard from the park.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the sign code would constitute a hardship upon the applicant to the degree it shortens the distance that the sign is visible from I-135.

PUBLIC INTEREST: It is staff's opinion that the requested variance to reduce the distance between the billboard and the parkland would not adversely affect the public interest in this case due to the unique circumstances of the park being located within an otherwise industrial area. No residential zoning is located in the vicinity.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for distance from a park does not oppose the general spirit and intent of the Sign Code. The intent of the Sign Code distance separation of 660 feet is to reduce the visibility of billboards from areas intended as parkland. In this situation, the soccer fields were located within an area already well-developed in industrial character rather than an area intended for park development. The park is screened from the billboard by two rows of trees, which may mitigate visibility of the sign from the park.

RECOMMENDATION: It is staff's opinion that the requested reduction in distance from the park is appropriate. Should the Board determine that the conditions necessary for a variance exist, the Secretary recommends that a variance to permit a reduced distance from 660 to no less than 500 feet for the off-site billboard in GI zoning be GRANTED, subject to the following conditions:

1. The sign shall be developed in conformance with the approved site plan and elevation drawing, as revised.
2. The applicant shall submit a landscape plan, to be approved by staff. The landscape plan shall demonstrate that the rows of trees be retained along the south and west property lines.
3. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

VARIANCE 2: INCREASE HEIGHT OF SIGN TO 50 FEET

UNIQUENESS: It is staff's opinion that this property is not unique. The property is similar to other properties along I-135 and would be eligible to obtain administrative approval for elevating the sign to 20 feet above the roadway at the location of the proposed sign, similar to other properties along the roadway. The requested shifting of the sign farther to the south (Variance 1) already increases the distance of visibility for southbound travelers. The written documentation for the increased height points out that the sign would be located in a low spot due to drainage. However, the property is eligible for increasing its height about 8 feet of the requested variance by administrative approval under the sign code guidelines allowing off-site signs to be 20 feet above the height of the adjacent expressway.

ADJACENT PROPERTY: It is staff's opinion that the requested variance to increase the height of a pole sign would adversely affect the rights of adjacent property owners not similarly granted this height increase.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the sign code would not constitute a hardship upon the applicant but would keep them to the same standards of other similarly situated properties.

PUBLIC INTEREST: It is staff's opinion that the requested variance to increase the height of the sign would adversely affect the public interest. It would not be similar to other billboards on this segment of I-135. Two signs north of 37th Street North and east of I-135 were granted administrative increases to 20 feet. Of the five signs located along I-135 between 29th Street North and 37th Street North, none have received a similar variance to increase height of the billboards beyond sign code regulations.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for increased sign size and height opposes the general spirit and intent of the Sign Code by increasing the height for one sign disproportionate to that permitted on similar billboards in the vicinity.

RECOMMENDATION: It is staff's opinion that the requested height increase for an off-site billboard in GI zoning be DENIED.

GOLTRY Goltry clarified that the hedge rows are on the applicant's property. Are there any questions?

GREENLEE Does the agent have anything to say?

AGENT Arthur A Stanfill, sign agent for Helping Hands Ministry asked other representatives of Helping Hands to introduce themselves.

DOHN My name is Paul Dohn, director of Helping Hands Inc.

SNODGRASS My name is Jim Snodgrass. I am retired and the chairman of the Board. I am a general contractor doing business with Boeing and all over the city. I work with Helping Hands and represent the owners of the property. We hope to turn a profit for them for the investment.

STANFILL Here are some drawings. What we typically, in our field, we look for is traveling viewability. The state signs are clearly visible and we are trying to follow the state regulations on signs. In order for this sign to be a viable billboard sign that the community will support, we look for 2000 feet of viewing distance. This is the current sign at a 1500-foot viewing distance and it is obstructed by the building, with an elevation disadvantage because it actually sits in a drainage ditch. At this point, we are at a disadvantage. If the sign was at 50 feet height at 1500 feet, it would be at a better viewing distance. Right now we are at a disadvantage from our competitor who has a clear visibility approaching on the same direction with no obstructions on their side. At 50 feet the sign will be less obstructed and we will have a clear advantage to compete with other billboard signs. Mr. Snodgrass, would you like to speak?

SNODGRASS There is a four-foot guard-rail on the west side of the bridge. There is a hump in the road or incline is taking I-135 over at 37th Street. The further back you go the less you can see the sign. At 2000 feet, you cannot see the bottom half of the sign. At the increase to 50 feet, it is about 3 feet above the highway sign, from that distance. The traffic would be able to see the entire sign. That is the reason we are asking for the increase in the height of the sign. Our ability to sell is based on the sign being viewable for at least 8 seconds. In order to meet the City Park Board soccer field distance requirement, we had to come up further this way and that is why, at this height, the sign is not completely viewable and that is why we are requesting an increase in height. The other thing a LED or digital sign can do is the weather station can access our sign and put the warning on it for alert the motorist. At first, we wanted to put our sign down with the state signs but we had to move back due to the Park Board. We would like our sign to be higher than the state sign. We would need at least 49.6 feet increase in the sign in order for motorist to see our sign. That would solve your problem and our problem of better viewing.

GREENLEE You have over went your time limit.

STANDFILL Any questions?

BLICK In relationship to your sign, where is the soccer field?

STANFILL Here is the soccer field. Our sign is located here. There are two rows of trees that Helping Hands owns that are blocking some view.

BLICK. If you go back to the aerial view, it looks like that where it is now it would be more of a nuisance to the soccer field than if you went further south. Where the position is now, if the lumens were going more to the south it would impact it more because of the angle the lumens would branch out and hit the soccer field. Bringing it down would make it more parallel, is that right?

STANFILL The sign would not be parallel. We are going to V-head the sign so that the sign on the other side is angled by 12 degree so that it will not be seen by the soccer field. It would be actually angled out. When you see the sign with the 12 degree and 5 degree, you would see the backside. The soccer field would see absolutely no lights.

GREENLEE If we granted the 500 feet that is where the star is on this map. How many more feet would it be to the highway sign?

STANFILL The state sign is at marker 1. We would look at shifting it about 100 feet further. Is that right Jim?

SNODGRASS This property is 500 hundred feet by 2000 feet. It would not be much closer than were we are currently. The more you swing down, the more the 500 feet comes into play.

FOSTER I want to comment about getting closer to the park area. I voted for that park in that area. The reason was it is too noisy and they could care less about this sign. I don't care if you put it 100 feet away, they would not care less. It is a very active park and they usually meet at night.

GREENLEE Does the board have any more questions?

FOSTER You know, Mr. Chairman, this board has tried in the past not to have signage any higher than the state signage to be fair to everybody. Donna have you seen their drawing that they are showing to us? Donna do you have any comments?

GOLTRY One of the things the Sign Code does not speak to, is the window of opportunity, or length of time, to view the signage. Therefore I am sticking to the Sign Code and what it states as far as the allowable height.

FOSTER This is an off premises or sign billboard, right? This is not their sign for the Helping Hands operation?

GOLTRY Yes.

FOSTER It will show multiple images with no limit?

GOLTRY No limit.

GOLTRY Are there any more people present to speak?

GREENLEE Mr. Thompson has a question.

THOMPSON Is this sign viewable from both directions?

STANFILL Yes.

SNODGRASS The sign needs to be up for two reasons. The ground is 17 feet 4 inches below the highway. All the rest of the highway is only about seven or eight feet below. That is why we need the extra six or seven feet and we would like to have it at least four feet higher. We were trying to get the elevation in order for people to read our signs. Our sign will have some vacancy and it will be for the Central Christian Services, community services and weather report. The owner is LLC Visions Incorporated, Central Christian church, we are all Christians and we hope we can get good advertising.

GREENLEE Good. Thank you.

FOSTER Have you thought about applying for or asking for an administrative adjustment?

STANFILL Yes, we have requested and were awarded an Administrative Adjustment and that is how we got it to 43 feet instead of 40. With the change in the sign placement, we are at a little disability on getting it viewed.

GREENLEE If I understand what Mr. Snodgrass is saying earlier, even if you moved it back to where the highway signs are, it would still be four feet too low?

SNODGRASS It would be 130 feet to move it back to the state signs. The 43 feet would be quite a bit low near the state sign. That is why we need four feet added to the height for the bottom of our sign in order for it to be viewed entirely.

GREENLEE Is there one else here to speak?

MULLHAGEN My name is David Mullhagen, 3405 N Hydraulic, Clear Channel Outdoor Advertising. I have to make a comment about a few things. We look at location all the time. What I have a problem with is the comment about the height disadvantage. We have a billboard across the street and we are at a disadvantage as well because as you come over, you can see our sign, but if you are traveling from the other side direction, we are at a disadvantage as well. Whereever you put your signage, that is your benchmark. We get 1000 feet for viewing distance. If you are going by the state signs, those signs are smaller and are raised for directional purposes, that is why the state and the City have separate regulations. They talk about the drainage. They asked for a variance and they got it. If they want to go by the state sign then

consider giving us the same advantage. Level the playing field to allow all of the billboard owners to increase our billboard signage as well.

GREENLEE Any other comments from the public?

STANFILL I would like to comment. 1.) We are at a disadvantage. Generally the disadvantage is considered for the read disadvantage and not a cross-read disadvantage. 2.) They do not have the same problem that we have at being in a drainage ditch. Where their sign is located, the ground is much higher. What we are asking for will not impact others properties that do not have a problem with viewability.

GREENLEE Bringing the discussion back to the board.

FOSTER Chairmen, I want to ask Donna under item number 1 that need to be reworded in regard to the landscaping.

GOLTRY Under adjacent property, the staff report should state that the reduced distance between the billboard and the parkland to no less than 500 feet should not exert a significant effect on the park and the presence of two rows of trees will reduce the visibility of the billboard from the park.

FOSTER I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to exist and that the variance be **GRANTED** subject to the conditions set out in the Secretary's Report on the first variance.

BLICK Seconded.

GREENLEE All in favor say aye?

Motion carries unanimously (5-0)

FOSTER I think the state signs come under a different standard. I do not think this is comparable to the state sign. It is not like they are trying to help people see an interchange and guide you to areas. This is a competitive thing. You read public interest and this is not in the best public interest, and it is up to this board not to raise it any higher than is necessary as in the Sign Code.

FOSTER I move that the board accept the finding of fact as set forth in the Secretary's Report that all five conditions set out in 2.12.590 B of the City Code as necessary for the granting of a variance have not been found to exist and that the variance be **DENIED**.

THOMPSON Seconded.

BLICK I think we are right on this decision and if you look at Kellogg you will see there are several signs along that highway. If we increase this base on advantage or disadvantage everyone will want to increase the height of their sign.

GREENLEE All in favor say aye?

Motion carries unanimously (5-0)

GREENLEE Next we will hear Agenda Item Number 3, BZA2010-07, Donna are you ready?

GOLTRY Donna Goltry, Planning Staff, presented BZA 2010-07 City Variance to increase height of sign from 26' 9" to 65 feet on property zoned "LC" Limited Commercial.

BACKGROUND: The applicant has requested a variance to increase the height of the sign at the southeast corner of Kellogg and Woodlawn Boulevard from 26 feet nine inches to 65 feet. The sign is a dual panel sign with the bottom panel displaying the name of the business and the top panel displaying a continuous movement LED video board. Total size of the sign shown on the diagram is 232 square feet. The Wichita Sign Code limits the amount of signage to 0.8 feet of sign face area per linear foot of frontage, which indicates the sign is claiming a frontage length of at least 290 feet. However, the application was restricted to Lot 1, Englewood 2nd Addition. Based on the frontage length of Lot 1, the entitled sign face area would be only 78 square feet. If the applicant had included its entire zoning lot of Lots 1-4 Englewood 2nd Addition plus the vacated right-of-way of Hampton Road, it would have allowed a total of 323 square feet of sign area, including the 96 square feet already occupied by a second sign located on the eastern portion of the zoning lot. The residual size available for this particular sign would be about 227 square feet. Current sign size is about 160 square feet and is within these limits.

The Sign Code limits the height of onsite signs in the LC Limited Commercial ("LC") zoning district to 25 feet, with the ability to increase the height by five feet by giving up sign rights to a second sign, based on sufficient frontage for spacing of 150 feet between sign locations. As previously pointed out, the applicant's request limits the variance to Lot 1, Englewood 2nd Addition. However, this 0.87 acre lot is part of a larger zoning lot utilized for Mike Steven KIA dealership. The entire zoning lot, comprised of Lots 1-4 Englewood 2nd Addition plus the vacated right-of-way of Hampton Road, would have allowed a total of three sign locations. Currently, two separate signs are located on the site.

The current sign was stated by the applicant as being 26 feet nine inches in height. At this height, it would have been considered occupying a second sign location, but could have been a maximum of 30 feet in height without variance or Sign Code administrative adjustment. Additionally, a Sign Code administrative adjustment could have been sought by the applicant to increase the height of the sign by up to 20 percent or up to 36 feet.

The applicant stated that the condition requiring the variance was created by the City of

Wichita, due to the construction of the Kellogg freeway. Kellogg is depressed adjacent to the site. The applicant has said it needs the variance to a height of 65 feet because it does not have as good of visibility as other signs on the far side of intersections in the direction of travel and because people need to be able to exit at interchanges traveling at 60 miles an hour after they see the sign. A visual inspection yielded contrary results. At the depressed segments of the freeway, signs cannot be seen as well along the frontage road parallel to the site, especially on the inside lanes. But the claim that the sign cannot be seen early enough to exit is related to distance between the sign and the exit ramp and the number of intervening signs for other businesses. At that distance, the bigger issue is that of seeing a multiplicity of competing signs.

The applicant's request would make this the tallest sign on the south side of Kellogg. The applicant submitted documentation comparing the request to three other signs along Kellogg between Oliver and Rock Road that exceed the Wichita Sign Code limits. All three signs identified by the applicant are significantly different from this application. In all three cases, the taller signs were granted by the governing body, not granted by a variance. In two cases, it was through the Community Unit Plan ("CUP"). The sign for Towne East was intended to be a single, primary sign to direct motorists to the regional shopping center, limited to 60 feet in height. Towne East offers over one million square feet in gross leasable area and has one tall sign for its shopping center identification. The other sign granted by the CUP derived from an old CUP provision allowing a tall sign under previous sign code limits and for what was intended to be a similar regional shopping center and was limited to 55 feet in height. The third sign was approved as part of a Planned Unit Development ("PUD"). It increased the height of the sign along an elevated segment of Kellogg to a height of 61 feet. Today a sign in this location would be eligible for increasing the height of the sign to 61 feet. A billboard at Kellogg and Beverly is 45 feet in height; it was a nonconforming billboard that was subject to special review by the Metropolitan Area Planning Commission per the Wichita Sign Code.

The property is zoned LC and is similar in use to other car dealership businesses along the south side of Kellogg. It is a KIA dealership. Other uses along the south side of Kellogg between Oliver and Rock Road are zoned mostly LC and include many car dealerships offering Buick, Chrysler, Dodge, GMC, Honda, Hyundai, KIA, Lincoln-Mercury, Mitsubishi, Nissan, Toyota, and used cars, plus a variety of other uses such as several hotels, restaurants, and furniture businesses. The property immediately to the west of Woodlawn is zoned LC and GO General Office ("GO") and has a commercial center with retail and office uses; a billboard is located on this site. The property to the south is zoned B Multi-Family Residential ("B") and is occupied by four-plex style apartments. The property to the north of Kellogg is located in the City of Eastborough and is the city's park.

ADJACENT ZONING AND LAND USE:

NORTH	Eastborough zoning	Kellogg, park
SOUTH	B	Four-plex apartments
EAST	LC	Vehicle sales
WEST	LC, GO	Commercial center, office

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is staff's opinion that this property is not unique in terms of signage visibility, but is similar to that of other car dealerships and businesses along the south side of Kellogg. The construction of Kellogg has resulted in tracts of land that are at grade, below grade and above grade with respect to the freeway. The similarly situated tracts have the same visibility. As the freeway drops below grade to travel below the arterial streets of Oliver, Edgemoor, Woodlawn and Rock Road, the tracts of land beyond the intersection, particularly on the direction of travel, have a zone where the signs are obstructed by the freeway walls, especially on the nearest lanes. Visibility is better from the opposite travel lanes or the inside lanes because of increased line of sight. Among these similarly situated properties south of Kellogg, the sign heights remain in the 25 feet to 35 feet height range except for one nonconforming sign along the south side of Kellogg that is 40 feet (25 feet lower than this applicant requested) and the signs granted the taller greater height by the governing body.

ADJACENT PROPERTY: It is staff's opinion that increasing this sign has two effects on adjacent property. First, it will project above the surrounding signs markedly. Yet the surrounding signs are for businesses with essentially the same use and they fall within the allowable limits for signage by the Wichita Sign Code. The granting of this variance would allow this sign to overshadow the surrounding signs on similar uses and avoid following the regulations adhered to by their neighbors.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the sign code would not impose any special hardship on this property. Today the sign is visible from a significant distance to the west and visible from the east to beyond the locations where one must decide to exit to the frontage ramp. The motorists have already passed the ramps where they would need to exit by the location where the sign is obscured by the freeway walls. It is more a problem of sign clutter from the multiplicity of signs competing for the motorists view. Raising this sign could set off a chain reaction of raising other signs and end with the same sign clutter/visibility problem but at an increased height of 65 feet.

PUBLIC INTEREST: It is staff's opinion that the requested variance is contrary to the public interest of providing a orderly and equitable plan for development. It is not the role of the Board of Zoning Appeals to make sign policy, but to allow for variances in those situations where a property is impacted in a unique way, not common with similar uses and similar situations. Public interest is served by restricting policy decisions to the governing body.

SPIRIT AND INTENT: It is staff's opinion that the granting of this variance is contrary to the spirit and intent of the Wichita Sign Code. The purpose of the Wichita Sign Code is *“to eliminate potential hazards to motorist and pedestrians; to encourages signs which, by their location and design, are harmonious to the buildings and sites which they occupy, and which eliminate excessive and confusing sign displays; to provide an opportunity to achieve a reasonable balance between the need for the sign and outdoor advertising industries while improving and preserving the visual qualities of the community; to protect public and private investment in buildings and open spaces; to provide for the administration of*

regulations imposed and set forth herein; and to promote the public health safety and general welfare.” The requested variance would be considered excessive compared to other signs, confusing by allowing one significantly taller sign among many signs following Sign Code regulations, and negatively impact the visual qualities of the community. The Wichita Sign Code allows all properties to take advantage of pooling its sign rights attributable to its zoning lot to increase the height of a single sign to as high as 35 feet (when sufficient frontage is available). In this case, assuming the applicant retains its second sign on the site, it would be allowed to a height of 30 feet, with the possible increase to 36 feet by administrative review and approval. The applicant can proceed in this manner today, adhere to the spirit and intent of the Sign Code, but still increase the height of the sign by over six feet.

RECOMMENDATION: It should be a policy decision for a sign to raise 65 feet. It is staff’s opinion that the requested height increase for the sign be DENIED.

GOLTRY I will stand for questions.

BLICK How high are those other signs along Kellogg on an average?

GOLTRY That sign is 25 feet high.

FERRIS My name is Greg Ferris. I am representing Miracle Signs Company today, the agent for the owners of the property. It is my job to show you how we meet the five criteria. I believe we are a unique piece of property. The staff report missed the point. The Sign Code, which was developed long ago, did not take underpasses into consideration when the Sign Code was developed. They have been talking about underpasses. But, there were not any at that time. So, the Sign Code did not take those into consideration. If you look at the word unique, it means it is unusual, not likely, or not common. At four intersections in the City of Wichita, I would say it is not common. I would say the properties right at the intersection have the most loss for sign viewing. They may be correct that other people may want to increase in their signage as well. The reason we need a taller sign is the grade has everything to do with the height of the sign. Every sign has the right to have visibility; otherwise, there is no need to have a sign. We were seen at the original grade, but since the redesign of Kellogg, you cannot see our sign. I was brought in after the application was filed and I sat down with the applicant and reviewed the video and we both concluded that a 55-foot sign would be needed for viewing. The BZA board has a right to grant this today. They planted trees along the highway; as those trees grow, the sign will not be seen.

So, first this property is unique. There are four location that are similar that makes us unique. This circumstance was brought on by the City. It used to be a 40 miles per hour road. You can no longer see the businesses anywhere along the road, so you will have to see the sign. It was not our fault, so we meet the first criteria.

Adjacent Property. It says that the granting of the variance will not adversely impact the rights of surrounding properties and their residences. It says that we will not adversely impact those properties. It is not the issue of sign clutter. It is that the road upgrade does not allow us to be seen. If our signs are slightly taller to accommodate the grade, it will not adversely impact the other properties. Therefore, the granting of the variance will not adversely impact the other properties. The road does not allow the sign to be seen. We will not adversely impact other properties and we are not adversely impact our neighbors by raising the sign. No one is here to complain today after receiving notice. So we are clearly not adversely impacting surrounding owners.

Hardship. This property is at a hardship because you cannot see their sign. We are at a hardship, we are not at grade; you cannot see our sign.

Number four, the Public Interest will not adversely affect the general health, safety, morals, order, convenience, general welfare or harmonious development of the community. So just considering public interest is not what the code is addressing. Here is what you need to look at if you are driving: it is not safe for a driver looking for a sign. A study by Penn State says the safe viewing for a sign is 8 to 10 seconds. It becomes a hazard to a driver if he has to look around to find the signage. A viewable sign does not create a hazard and is a positive impact on public safety. The sign must be seen to prevent a hazard. The public will have no problem viewing this sign while driving at 55 feet. It will not be a hazard to the public when they can see a sign. When this Sign Code was developed, underpass issues were not considered. I would like to show you a sign that was granted at 65 feet along Kellogg. Therefore, clearly the public does not have a problem with signage at 65 feet. The reason for this request is due to the change of Kellogg grade that inhibits the sign from being seen. If we can bring it down to 55 feet, it will be viewable. The request is to eliminate hazards to the drivers and for the signage to be visible. We clearly meet the 5 criteria to pass this variance.

FERRIS I will answer any questions.

BLICK Is this the Steven group or Steven KIA applying for this variance?

FERRIS It is the Steven Motor group.

BLICK Those four properties, are they own by KIA? Mike's lease listed nine different properties there? Is that how it is sectioned off?

FERRIS Those four properties are owned by Thomas Crips and John Crips. Mike Stevens owns these properties here. Mike leases this property here.

BLICK It shows three signs. It shows two existing signs and one being replaced?

LUKENS Luke Lukens, I am with Miracle Signs. There is an existing sign and we are going to move it from here to here. The other two signs (existing) are on another parcel, but it is owned by Steven KIA.

BLICK Are you seeking to move any of the other signs?

LUKENS No, we are not focusing on the other two signs. We are only looking to move this one primary signs in order for people to find Steven KIA. These two only need to be seen by 100 feet.

BLICK Does the little blue sign tell when to exit for the Steven KIA business?

GOLTRY My slide shows Wichita Suites.

FERRIS As a general rule, the state allows restaurants and hotels on the blue signs.

BLICK Isn't there an attorney office listed on one of them right before Washington?

FERRIS Yes. I do not know the rules on the blue signs, so I am not prepared to answer that question. I apologize.

FOSTER People pay monthly to do that type of signage?

FERRIS I am not sure if they allow a grouping of them. We would have no problem with a conditional approval to not raise the other two signs.

FOSTER What is the business or use of the land to the west of the business?

FERRIS That is a hotel.

FOSTER What is that sign there?

FERRIS That is a billboard there. Luke can answer.

LUKENS Right there is a hotel sign that was grandfather in. Next is the strip mall sign closer to the intersection.

FOSTER Okay.

GREENLEE Any other questions?

THOMPSON If you were to go to 55 feet, would that give you enough height to be seen prior to the exit ramp?

FERRIS This is the 65 feet here. This is the 55-foot sign. The next one is at 50 feet and it is obscured by foliage. We think the 55 feet will serve the viewing purpose. This is our decision when considering signage to give the public a safe viewing distance to the sign.

GREENLEE Any other questions of the Mr. Ferris? Any questions from the public? We will turn the discussions over to the board.

FOSTER Donna, did you say that we have four underpasses?

GOLTRY Yes, in this segment of Kellogg.

FOSTER Do we have any on the west side of town on Kellogg?

FERRIS I can answer that. Because this is an upscale neighborhood, they did the underpasses as a barrier to control noise. Out west, there are no underpasses. Underpasses are more expensive to construct.

FOSTER Any condition to grant this variance would set precedence for the other intersections in many areas not only east but west as well. Mr. Ferris is good at his argument and persuasive. But, this is going to stand out like a sore thumb or look out of place. The Sign Code, in the back of the book is references, was written in 1950, amended in 2004 and many amendments since. And many sign heights were lowered but they took into account the roadway as we had them in 2004. However it did not take into account the roadway being lower than grade.

COX The original code was 1974. I believe it was revised in 1990 when it was lowered (referring to sign heights).

FOSTER We are looking at this sign from below. It will stick out like a sore thumb.

THOMPSON Looking within four miles from Kellogg and Oliver, I think if we look in the prospective of wind towers, once we start allowing 65 feet in sign height, there will be other businesses that will want the height increase as well.

HERMANN How was Rusty Eck signage allowed to be at that height?

GOLTRY They did a Planned Unit Development and they moved their right-of-way back too, and everything, including signage requirements, was incorporated in the PUD. It is unique. The Towne East shopping center identification sign was also incorporated in their CUP sign conditions by an amendment.

FERRIS When we were negotiating (referring to the right-of-way acquisition and Rusty Eck PUD), he was going to lose his signage, and he had to move, and he was going to lose his visibility, and it was approved by the governing body to give him that sign condition.

FOSTER I move that the board accept the finding of fact as set forth in the Secretary's Report that all five conditions set out in 2.12.590 B as necessary for the denial of a variance have been found to exist and that the variance be **DENIED** subject to the conditions set out in the secretary's report.

BLICK Seconded.

GREENLEE All in favor say aye?

Motion carries unanimously (5-0)

GREENLEE Next we will here from OCI.

COX I am undertaking code review right now to make revisions to the current Sign Code. If you have any suggestion, I will take it under consideration.

BLICK Is it normally, across the states, that signage gets higher and higher?

COX I have traveled quite a bit across this country. It varies from city to city and is all controlled by the local governing bodies.

Adjournment 3:19 PM